



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Poitra Construction Company
File: B-230769
Date: April 19, 1988

DIGEST

Protest of a subcontract awarded by an Indian tribe for the construction of a school under the Indian Self-Determination and Education Assistance Act is dismissed because the subcontract was not "by or for" the government.

DECISION

Poitra Construction Company protests the award of a subcontract by the Turtle Mountain Band of Chippewa Indians (the Tribe), under the Department of the Interior, Bureau of Indian Affairs (BIA) project No. W56-651/A61, to John T. Jones Construction Company for construction of Turtle Mountain Community Middle School. The Tribe received a contract from BIA for the school construction under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 et seq. (Supp. III 1985). Poitra contends that the tribe improperly allowed Jones to increase the price for an alternate bid after bid opening, and to revise its list of certified Indian subcontractors in violation of the solicitation's 30 percent certified local Indian subcontracting requirement.

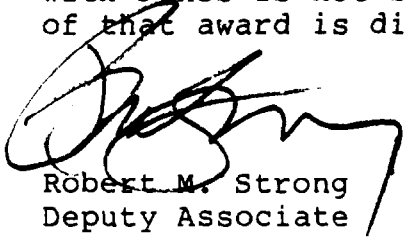
The agency's position is that we should not consider this protest because it involves the award of a subcontract by a government prime contractor and that the circumstances under which we consider such protests do not exist here. We agree. Because the contract was not awarded by or for a federal agency, we dismiss the protest.

Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(1) (Supp. III 1985), this Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We have interpreted this provision as authorizing us to decide protests of subcontract solicitations and awards only when the subcontract is "by or for the government." 4 C.F.R. § 21.3(f)(10) (1988).

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Basically, a subcontract is considered to be by or for the government when the prime contractor principally provides large scale management services to the government and, as a result, generally has an ongoing purchasing responsibility. In effect, the prime contractor acts as a middleman between the government and the contractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Electric Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145, otherwise provides large-scale management services, Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44, serves as an agency's construction manager, C-E Air Preheater Co., Inc., B-194119, Sept. 14, 1979, 79-2 CPD ¶ 197, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. University of Michigan, et al., B-225756, et al., June 30, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 643. Except in these limited circumstances, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered to be by or for the government. See, e.g., Rhode & Schwartz-Polarad, Inc.--Reconsideration, B-219108.2, July 8, 1985, 85-2 CPD ¶ 33.

We do not believe this case falls within any of the above limited circumstances. First, the construction project is for a limited purpose and does not entail ongoing purchasing responsibilities. See Technical Engineering, B-230263, Mar. 30, 1988, 88-1 CPD ¶ _____. Second, the Tribe's contract with BIA and the selection procedures for the subcontractor indicate that the Tribe is not acting as a mere conduit. Unlike the circumstances in University of Michigan, et al., B-225756, et al., supra, where the prime contract provided for selection of a subcontractor by government employees, and the subcontractor's first task was to discuss its training program with government representatives, the Tribe's contract with BIA does not provide for government selection of a subcontractor. Furthermore, the BIA contract with the Tribe states that "there will be no submittals, transmissions of information, or data, or communications between the Government and the subcontractors except through Turtle Mountain." Because the subcontract with Jones is not by or for the government, Poitra's protest of that award is dismissed.



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